

Log # 40745

Contract # A03421

DHS Procurement # Emergency

## STATE OF UTAH DEPARTMENT OF HUMAN SERVICES CONTRACT FOR SERVICES

**CONTRACTING PARTIES:** This Contract is between the Utah Department of Human Services, including all of its divisions, institutions, offices, and bureaus. (hereinafter referred to as "DHS") and the following entity/person, hereinafter referred to as "Contractor":

**Name:** Nine's Foster Agency LLC  
**Legal Address:** 11286 South Lucas Lane  
South Jordan, UT 84009

**Legal status:** Limited Liability Company

Pursuant to Utah Code Ann. 26B-1-201, as of July 1, 2022, the parties agree that the contracting parties, with all contractual obligations, duties, and rights, will be the Department of Health and Human Services and Contractor.

**CONTRACTOR CONTACT INFORMATION:** The Contractor shall ensure that DHS has accurate contact information for Contractor at all times throughout the duration of this Contract and throughout the duration of Contractor's record retention responsibilities. The Contractor shall immediately notify DHS of any changes to contact information.

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### ATTACHMENTS TO THIS CONTRACT

**The following attachments are incorporated into this Contract:**

**ATTACHMENT A: SCOPE OF WORK 04083803**

# **PART I: GENERAL PROVISIONS**

## **SECTION A: CONTRACT DESCRIPTION AND SPECIFICATIONS**

1. **CONTRACT PURPOSE:** The Contractor will provide high level residential treatment services for one or more DHS clients as more fully described in the Contract Scope of Work.
2. **CONTRACT PERIOD AND RENEWAL OPTIONS:**
  - a. **Contract Period:** This Contract is effective as of **October 27, 2021** and terminates on **October 26, 2022**, unless terminated sooner in accordance with the terms and conditions of this Contract.
  - b. **Contract Renewal:** This Contract may not be renewed.
3. **PROCUREMENT:** This Contract was awarded pursuant to an emergency procurement.
4. **TYPE AND AMOUNT OF CONTRACT:** This Contract is a **Fixed Amount /Unit of Service (Rate-Based) Contract**. The Contractor shall not be paid more than **\$175,000.00** for providing services pursuant to this Contract. Payment to the Contractor is based on individual units of service provided by the Contractor, payable at the rate(s) specified in this Contract.
5. **DHS DISCRETION ABOUT CLIENT PLACEMENTS:** DHS makes no express or implied guarantee or representation that it will place or maintain any clients with the Contractor, that it will refer any clients to the Contractor, or that any clients will select the Contractor to provide or maintain services. The primary consideration in placing clients will be the client's needs as determined solely in the discretion of DHS.
6. **DOCUMENTS INCORPORATED BY REFERENCE:**
  - a. Any document specifically incorporated by a provision of this Contract.
  - b. All statutes, regulations, and federal policies or requirements that apply to this Contract or the funds expended under this contract.
7. **ORDER OF INTERPRETATION:** In the event of any conflict between this Contract and other documents, the conflict will be resolved in the following order:
  - a. This Contract, Attachment A, Scope of Work, and signed amendments.
  - b. The DHS Procurement.
  - c. Attachments to this Contract other than Attachment A.

## **SECTION B: CONTRACTOR'S LEGAL STATUS, TRAINING, INDEMNIFICATION, AND BUSINESS CONTINUITY RESPONSIBILITIES**

1. **CONTRACTOR IS AN INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor, and has no authorization, express or implied, to bind DHS or any state agency to any agreements, settlements, or liability. Nothing in this Contract will be construed to limit the Contractor's authority to bind itself to agreements, settlements or liability, as long as such agreements, settlements, or liability affect only itself and not DHS. The Contractor is not authorized to act as an agent for DHS except as expressly provided in this Contract. Persons employed by DHS and acting under the direction of DHS will not be deemed to be employees or agents of the Contractor. Persons employed by the Contractor and acting under the direction of the Contractor will not be deemed to be employees or agents of DHS except as expressly provided in this Contract. As an independent contractor, the Contractor is responsible for its own operations and for providing the office space, supplies, equipment, tools, and other supports necessary to provide the services covered by this Contract unless specifically stated otherwise in the Contract.
2. **REGISTRATION WITH UTAH DEPARTMENT OF COMMERCE:** The Contractor shall maintain current registration with the Utah Department of Commerce, Division of Corporations and Commercial Code.
3. **TRAINING FOR CONTRACTOR'S STAFF:** The Contractor shall conduct all necessary training to ensure that its staff carry out the responsibilities required under this Contract and that they are familiar with the requirements imposed by this Contract and applicable laws.
4. **CONTRACTOR SHALL PROVIDE INSURANCE AND INDEMNIFICATION:**
  - a. **Required Insurance.** The Contractor shall continuously maintain commercial insurance or self-insurance that, at a minimum, meets the dollar amounts and types of coverage specified in this Contract. The Contractor's failure to fulfill the insurance requirements of this Contract constitutes a material breach of this Contract.

DHS may reject policies that contain exclusions or limitations that are unacceptable to DHS. DHS may, by written amendment, modify the requirements for insurance limits, coverages, or endorsements.

Any commercial insurance must be obtained from insurance companies authorized to do business in the State of Utah and rated "A-" or better with a financial size category of Class VII or larger, according to the ratings and financial size categories published by AM Best Company at the time this Contract is executed.

Commercial insurance may be obtained from an insurance company that does not meet the above stated AM Best Company rating and/or class size **if** the Contractor provides documentation verifying the insurance company providing the Contractor's insurance **is reinsured** by another affiliated insurance company that **does meet** the required rating and class size requirements.

The Contractor's general insurance policy must include an endorsement that names the State of Utah, DHS, and their officers and employees as additional insureds. The additional insured endorsement must provide the State of Utah, DHS, and their officers and employees with primary coverage (not contributing coverage) for any liability arising

as a result of the Contractor's acts or omissions in connection with this Contract. The Contractor is not required to obtain an "additional insured" endorsement for any automobile or Workers' Compensation insurance policy required by this Contract.

- b. **Deductibles and Similar Costs.** The Contractor shall be responsible for paying any deductibles, self-insured retentions or self-insurance costs, *and similar items*. The deductibles, self-insured retentions, self-insurance costs, *and similar items* for the insurance policies required by this Contract may not exceed \$10,000 unless the Contractor obtains prior **written** approval of a higher amount from the DHS Deputy Director for Support Services who may withhold approval for any reason. Any deductibles, self-insured retentions, or similar items must be stated on the certificate of insurance.
  
- c. **Types of Liability Protection the Contractor Shall Provide:**
  - (1) **Private Contractor—Commercial Insurance Required:** If the Contractor is not a governmental entity of the State of Utah, the Contractor shall maintain the following policies of liability insurance at its sole expense during the term of this Contract, unless the Contractor has already satisfied the requirements of the self-insurance provision below:
    - (a) *General Liability Insurance:* The Contractor shall maintain a policy of general liability insurance throughout the duration of this Contract that, at a minimum, covers the following types of liability: bodily injury or death, personal injury, property damage, and liability for the property of others in the care, custody, and control of the Contractor. The policy must provide for a combined single limit or the equivalent of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate. If the Contractor is providing services at more than one site, the general liability insurance must cover each of those sites. If the general liability insurance coverage obtained by the Contractor is written on a "claims-made" basis, the policy must be maintained continuously throughout the duration of this Contract. Additionally, the claims-made policy must be maintained continuously for a period of five years after the termination of this Contract or the Contractor shall obtain extended reporting coverage such that the policy covers claims reported up to five years beyond the date that this Contract is terminated. At the time any extended reporting coverage is obtained to meet the requirements of this Contract, the Contractor shall email documentation of such coverage to DHS at [bcm@utah.gov](mailto:bcm@utah.gov). This paragraph survives the termination of this Contract.
  
    - (b) *Automobile Insurance:* If the Contractor's services involve transporting any clients or goods for DHS, the Contractor shall maintain a policy of automobile liability insurance covering property damage, personal injury protection, and liability for the vehicles used by the Contractor (including owned, hired, and non-owned vehicles). The policy must provide for a combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence. If the Contractor subcontracts with another entity or

individual for transportation services, or services that include transportation, the Contractor may satisfy this insurance requirement by submitting proof that its subcontractor has complied with the requirements of the "Insurance and Indemnification" section of this Contract.

If the Contractor provides individual residential care services by contracting with individual residential care homes, the Contractor shall maintain a policy of automobile liability insurance as indicated above, and each of the Contractor's individual residential care homes must maintain a policy of automobile liability insurance. The automobile liability insurance required of individual residential care homes must cover property damage, personal injury protection, and liability with a combined single limit or the equivalent of not less than \$100,000 per person and \$300,000 for each accident/occurrence occurring during the course of their duties as an individual residential care home. **As used in this provision, the term "individual residential care" refers to twenty-four hour family-based care for one or more clients in foster/proctor care, a host home, or a professional parent setting.**

- (c) *Professional Liability Insurance:* The Contractor shall maintain a policy of professional liability insurance ("malpractice insurance") throughout the duration of this Contract with a limit of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate if any services provided pursuant to this Contract are performed by professionals who are licensed by a professional licensing organization or the Utah Division of Occupational and Professional Licensing including, but not limited to, doctors, dentists, nurses, massage therapists, social workers, and mental health therapists. This professional liability insurance must cover damages caused by errors, omissions, or negligence related to the professional services provided pursuant to this Contract. If the professional liability insurance coverage obtained by the Contractor is written on a "claims-made" basis, the policy must be maintained continuously throughout the duration of this Contract. Additionally, the claims-made policy must be maintained continuously for a period of three years after the termination of this Contract or the Contractor shall obtain extended reporting coverage such that the policy covers claims reported up to three years beyond the date that this Contract is terminated. At the time any extended reporting coverage is obtained to meet the requirements of this Contract, the Contractor shall email documentation of such coverage to DHS at [bcm@utah.gov](mailto:bcm@utah.gov). This paragraph survives the termination of this Contract.

- (2) **Self-Insured Private Contractor—No Commercial Insurance Required, But Indemnification and Prior DHS Approval Required:** If the Contractor claims that it is self-insured, the Contractor shall provide DHS with evidence that the Contractor is financially solvent and has established financial arrangements (such as a written comprehensive self-insurance program, performance bonds, or fidelity bonds) that will provide DHS with liability protection at least as adequate and extensive as the insurance otherwise required pursuant to this Contract for non-governmental entities. Specifically, the Contractor must show that its ability to process and pay claims adequately, fairly, and in a timely manner is comparable to a commercial insurer that provides general liability insurance, automobile insurance, and professional liability insurance. Before executing this Contract, the Contractor shall obtain from the DHS Deputy Director for Support Services a written statement indicating that DHS has determined, based on the Contractor's financial evidence and representations, that the Contractor's self-insurance arrangements and indemnification agreements are sufficient to satisfy the requirements of this Contract, and the Contractor is, therefore, not required to obtain additional commercial liability insurance naming DHS as an insured party. If it sees fit, DHS may include in this statement any additional conditions designed to ensure that the Contractor's self-insurance arrangements are comparable to the insurance required of other non-governmental contractors. A copy of the Deputy Director's statement is attached to this Contract and is a material provision of this Contract. Nothing in this provision will be construed to require DHS to consent to any self-insurance arrangements, and DHS may withhold its approval for any reason.
- (3) **Utah Governmental Entities:** Utah Governmental entities are not required to provide certificates of insurance, "additional insured" endorsements, or evidence of continued coverage.

- d. **All Contractors--Workers' Compensation:** The Contractor shall comply with the Utah Workers' Compensation Act which requires employers to provide workers' compensation coverage for their employees.
- e. **Insurance Required of Subcontractors.** The Contractor shall require its subcontractors to satisfy the insurance and indemnification requirements applicable to them. For example, if the Contractor is a governmental entity and the subcontractor is a private entity, the Contractor shall comply with the insurance and indemnification provisions applicable to governmental entities, and shall require the subcontractor to comply with the insurance and indemnification provisions applicable to non-governmental entities.

Before entering into any subcontracts for the provision of services pursuant to this Contract, the Contractor shall ensure its subcontractors obtain and provide the same additional insured endorsements from their general liability insurer(s) that meet the requirements as indicated in the Paragraph below.

- f. **Certificate of Insurance, "Additional Insured" Endorsement and Evidence of Continued Coverage.** The Contractor shall obtain from its general liability insurer(s)

and shall provide to DHS a certificate of insurance and "additional insured" endorsement that indicates that the required coverage is in effect and that the insurer shall give DHS 30 days' notice of any modification, cancellation or non-renewal of the policy. The certificates of insurance must list Department of Human Services, Bureau of Contract Management, Contractor Insurance Notices, 195 N. 1950 W., Salt Lake City, UT 84116 in the certificate holder box. The certificates and any notice of cancellation must be emailed to DHS at: [bcm@utah.gov](mailto:bcm@utah.gov). Upon request from DHS, the Contractor shall provide DHS with a copy of the Contractor's full insurance policy within 10 business days. DHS's receipt of any certificates of insurance, policy endorsements, or policies that do not comply with this Contract will not waive or otherwise affect the requirements of this Contract. On an annual basis and upon request from DHS, a non-governmental contractor shall provide DHS with evidence that the Contractor or subcontractor has the insurance coverage required by this Contract.

g. **Indemnification.** Regardless of the type of insurance required by this section, the Contractor (and where applicable, the subcontractor) agrees to the following indemnification:

- (1) **Indemnification by Non-Governmental Contractor:** If the Contractor is not a governmental entity of the State of Utah, the Contractor agrees to and shall defend, hold harmless, and indemnify the State of Utah, DHS, and their officers and employees from and against any losses, damages, injuries, liabilities, suits, claims, and proceedings arising out of the performance of this Contract, or which are caused in whole or in part by the acts, failure to act, or negligence of the Contractor's officers, agents, volunteers, or employees, except where the claim arises out of the sole negligence of DHS.
- (2) **Indemnification by Governmental Contractor:** If the Contractor is a governmental entity of the State of Utah and subject to the Utah Governmental Immunity Act ("GIA"), there is no indemnification required and the Contractor and DHS shall each be responsible for their own actions and defense of any claims or suits to the extent required by the GIA. Nothing in this Contract will be construed as a waiver by either party to this Contract of any rights, limits, protections, or defenses provided by the GIA, nor will this Contract be construed, with respect to third parties as a waiver of any governmental immunity to which a party to this Contract is entitled.
- (3) **Definition of the Term "Claim":** As used in these "Indemnification" provisions the term "claim" includes any and all claims, losses, damages, liabilities, judgments, costs, expenses, attorney's fees, and causes of action of every kind or character (including personal injury, death, and damages to property or business interests) arising because of, out of, or in any way connected with the performance of this Contract or with a party's failure to comply with the provisions of this Contract.
- (4) **Defense of Suits Brought Upon Claims:** The Contractor shall defend all suits brought upon claims and shall pay all costs and expenses including attorney's fees, but DHS may participate in the defense of any such suit in which DHS

perceives that its interests are not being protected by the Contractor or where the Contractor believes, asserts, or claims that the claim arises out of the sole negligence of DHS. In the latter situation, the Contractor shall notify DHS within 90 days of receiving notice of the claim against it that the Contractor asserts that the claim arises out of the sole negligence of DHS. In the event the Contractor fails to notify DHS within this timeframe, the Contractor shall defend and indemnify DHS even if the claim arises out of the sole negligence of DHS. The participation by DHS in the defense of a claim does not relieve the Contractor of any obligation pursuant to this Contract. However, if DHS elects to retain independent counsel, DHS shall pay the attorney's fees and costs associated with such counsel except where DHS retains independent counsel due to a claim by the Contractor that the claim arises out of the sole negligence of DHS. If a finding is later made that the claim did not arise out of the sole negligence of DHS, the Contractor shall reimburse DHS for all costs, including attorney's fees incurred by DHS.

- (5) **No Subrogation or Contribution:** The Contractor has no right of subrogation or contribution from the State or DHS for any judgment rendered against the Contractor.

6. **EMERGENCY MANAGEMENT AND BUSINESS CONTINUITY PLAN:** The Contractor shall use qualified personnel to perform all services in conformity with the requirements of this Contract and generally recognized standards. **The Contractor's performance will not be excused by force majeure.** The Contractor shall identify the critical functions or processes of its business operations essential for providing the services required in this Contract. The Contractor shall also develop an emergency management and business continuity plan ("plan") that will allow the Contractor to continue to operate those critical functions or processes during or following short-term or long-term emergencies, periods of declared pandemic, or other disruptions of normal business. The plan must address at least the following areas as they pertain to the services Contractor is providing:

- a. Evacuation procedures;
- b. Temporary or alternate living arrangements, including arrangements for isolation or quarantine;
- c. Maintenance, inspection, and replenishment of vital supplies, including food, water, clothing, first aid supplies, and other medical necessities, including client medications, and the supplies necessary for infection control or protection from hazardous materials, etc.;
- d. Communications (with Contractor staff, appropriate governmental agencies, and clients' families);
- e. Transportation;
- f. Recovery and maintenance of client records; and
- g. Policies and procedures that:



- (1) ensure maintenance of required staffing ratios;
- (2) address both leave for, and the recall of, Contractor's employees unable to work for extended periods due to illness during periods of declared pandemic; and
- (3) ensure the timely discharge of the Contractor's financial obligations, including payroll.

In addition, the Contractor represents that it provides at least annual training for its staff on its plan and it acknowledges that DHS may rely upon this and the other representations of the Contractor in this paragraph.

The Contractor shall provide DHS with a copy of its plan upon execution of this Contract. The Contractor shall evaluate its plan at least annually. Any modifications to the Contractor's plan must be provided to DHS within 15 days of the time the modifications are made.

## **SECTION C: CONTRACTOR'S COMPLIANCE WITH APPLICABLE LAWS AND DHS POLICIES**

1. **COMPLIANCE WITH APPLICABLE LAWS:** The Contractor shall comply with all applicable laws. The term "applicable laws" refers to all federal and state statutes, regulations, and executive orders that apply to the Contractor's activities or that impose restrictions on the Contractor's use of federal or state funding or grants. It is the Contractor's responsibility to obtain legal advice about the laws governing its activities.
2. **CERTIFICATION OF NON-DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any governmental entity. If the Contractor cannot so certify, the Contractor shall submit a written explanation and shall obtain *prior* written approval for this Contract from the DHS Deputy Director for Support Services. Failure of the Contractor to obtain such prior written approval will be considered a material breach of this Contract.
3. **COMPLIANCE WITH BYRD ANTI-LOBBYING AMENDMENT:** Title 31 United States Code (USC) § 1352 requires Contractors with a contract in excess of \$100,000 to certify that they will not and have not used government appropriated funds to influence an officer or employee of any agency in connection with obtaining a contract, grant, or award. If the Contractor meets the criteria for disclosure set forth in the above-cited section, the Contractor shall complete and submit to the required federal entity a Disclosure of Lobbying Activities form.
4. **DEFICIT REDUCTION ACT - MEDICAID FRAUD AND ABUSE:** The Contractor shall meet requirements for *Medicaid-specific Federal Assurances*, Section 6032 of the Deficit Reduction Act of 2005 (Employee Education About False Claims Recovery). The Contractor shall educate its employees, agents, and subcontractors about:
  - a. The False Claims Act, 31 United States Code §§3729–3733;

- b. Administrative Remedies For False Claims and Statements, 31 United States Code §§3801–3812;
- c. The Utah False Claims Act, Utah Code § 26-20-1, et seq.;
- d. The Utah Protection of Public Employees Act, Utah Code § 67-21-1, et seq.;
- e. Policies and procedures for detecting and preventing fraud, waste, and abuse;
- f. How to report suspected fraud, waste, and abuse of Medicaid funds;
- g. The whistleblower protections afforded employees that report suspected fraud, waste, and abuse of Medicaid funds in good faith; and
- h. The penalties for filing false or fraudulent claims for Medicaid payment.

If the Contractor maintains an employee handbook, the Contractor shall include the information described above and its policies and procedures for detecting and preventing Medicaid fraud, waste, and abuse in its employee handbook.

Additional information is available on the DHS website.

5. **FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA):** If any of the funds received by the Contractor pursuant to this contract are identified as federal awards, the Contractor shall comply with the FFATA requirements applicable to sub-awardees and shall provide DHS with the following information, updating it as changes occur:
- a. The Contractor's Data Universal Numbering System (DUNS) number;
  - b. The names and compensation of the Contractor's five most highly compensated executives *whenever the Contractor meets the criteria identified in FFATA for reporting executive compensation data*; and
  - c. The Contractor's principal place of performance.

Information entered by DHS in the Federal Funding Accountability and Transparency Act Sub-award Reporting System (FSRS) can be viewed at the following website: [USAspending.gov](http://USAspending.gov).

6. **COMPLIANCE WITH PRO-CHILDREN ACT OF 1994:** “In accordance with Part C of Public Law 103-227, the “Pro-Children Act of 1994”, smoking may not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used regularly for the provision of health, day care, education, or library services to children under the age of 18 if the services are funded by federal programs whether directly or through state or local governments. Federal programs include grants, cooperative agreements, loans and loan guarantees, and contracts. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment.” By signing this Contract, the Contractor certifies that it will comply with the requirements of this Act.

7. **HUMAN SUBJECTS RESEARCH:** The Contractor may not conduct any research involving human subjects or their private data if the subjects are employees of DHS or individuals receiving services (whether direct or contracted) from DHS, or individuals receiving services funded by DHS, unless the Contractor has obtained prior written approval from the DHS Institutional Review Board (IRB), and from any other federal or state agencies whose approval is required for research on human subjects. Before conducting such research, the Contractor shall fully comply with any requirements or conditions, including requirements relating to informed consent, imposed by such IRB committees or agencies.

The Contractor is not entitled to use human subjects information generated in connection with this Contract for any purpose, including scholarly publications or research purposes, unless the Contractor obtained written approval of its research protocol from the DHS IRB prior to the commencement of any research efforts.

8. **COMPLIANCE WITH LICENSING STANDARDS AND OTHER LAWS:** The Contractor represents that it currently meets all applicable licensing standards and other requirements of federal and state law, and all applicable ordinances of the city or county in which services or care is provided. The Contractor shall continue to comply with all such standards, requirements, and ordinances during the term of this Contract, and if the Contractor fails to do so DHS may terminate this Contract immediately.
9. **COMPLIANCE WITH BACKGROUND SCREENING REQUIREMENTS:** The Contractor and any individuals associated with Contractor shall comply with the background screening requirements in Utah Code §62A-2-120 and Utah Administrative Code R501-14.
10. **COMPLIANCE WITH UTAH 211 INFORMATION REQUESTS:** The Contractor shall provide Utah 211 with information about the Contractor's services for inclusion in the Utah 211 statewide information and referral system. Information must be provided in the form determined by Utah 211.
11. **CONTRACT INFORMATION:** DHS shall provide contact information to the Department of Workforce Services (DWS). The Contractor shall provide DWS with job vacancy and contact information upon request from DWS in accordance with Utah Code § 35A-2-203.
12. **REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify," only applies to contracts issued through a Request for Proposal process, and to sole sources included within a Request for Proposal. It does not apply to Invitation for Bids or Multiple-Stage bids.
  - a. Status Verification System
    - (1) The Contractor certifies as to its own entity, under penalty of perjury, that it has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Utah Code §63G-12-302.

- (2) The Contractor shall require that the following provision be placed in each subcontract at every tier: “The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Utah Code § 63G-12-302, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work.”
- (3) Manually or electronically signing this Contract is deemed the Contractor’s certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws, including Utah Code § 63G-12-302.

b. Indemnity Clause for Status Verification System

The Contractor (includes, but is not limited to any Contractor or Consultant) shall protect, indemnify, and hold harmless the State and its officers, employees, agents, representatives, and anyone that the State may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Contractor’s subcontractor or subconsultant at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

13. **COMPLIANCE WITH PROVIDER CODE OF CONDUCT:** The Contractor shall follow and enforce the Provider Code of Conduct.

- a. Before allowing any employee or volunteer to work with clients pursuant to this Contract, the Contractor shall also comply with the following requirements:
  - (1) The Contractor shall provide a current copy of the Code of Conduct to each employee or volunteer currently working for the Contractor and to any new employees or volunteers; and
  - (2) The Contractor shall retain in each employee’s or volunteer’s file a signed and dated statement in which that person certifies that he or she has read and understands the Code of Conduct and will comply with it.
- b. As used in this Paragraph, "volunteer" means a person who:
  - (1) donates services to the Contractor without pay or other compensation except for expenses incurred (such as meals and other travel costs); and
  - (2) is a board member, officer, or other person substantially involved in the Contractor's decision-making processes, or is a person who has direct unsupervised contact with DHS clients.

- c. Annually, the Contractor shall obtain a copy of the current DHS Provider Code of Conduct poster. The Contractor shall prominently display the poster where its employees and volunteers can see it. The current DHS Provider Code of Conduct poster is located on the DHS Bureau of Contract Management website.
- d. If the Contractor is a Utah governmental entity, the Contractor may enforce its own written Code of Conduct for the provision of these services, which at least includes the elements of the DHS Provider Code of Conduct, and is at least as stringent as the DHS Provider Code of Conduct.

14. **RESTRICTIONS ON CONFLICTS OF INTEREST:** The Contractor shall not enter into any transaction that is improper or gives the appearance of being improper because of a conflict of interest.

a. **Definitions**

- (1) **“Business Entity”** is as defined in Utah Code § 67-16-3.
- (2) **“Conflict of Interest”** means any situation where the Contractor has economic, social, political, familial, legal, or other interests which interfere with, or have the potential to interfere with, the exercise of the Contractor’s duties, responsibilities, or judgment in connection with this Contract, or which involve conflicting loyalties to the Contractor and to another interest. “Conflict of Interest” also includes any violation of the Ethics Acts.
- (3) **“Contractor”** includes all "representatives" of the Contractor.
- (4) **“Disclosure Statement”** means a written statement provided to DHS by the Contractor about a Conflict of Interest. “Conflict of Interest Certification” and “Conflict of Interest – Disclosure Statement” forms are available from the DHS Contract Representative.
- (5) **“Ethics Acts”** means the Utah Public Officers’ and Employees’ Ethics Act (Utah Code § 67-16-1 et. seq.) and the Municipal Officers’ and Employees’ Ethics Act (Utah Code § 10-3-1301 et. seq.).
- (6) **“Related Party”** means:
  - (a) any person related to the Contractor’s representative by blood or marriage including father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, uncle, aunt, nephew, niece, grandson, granddaughter, or first cousin; and
  - (b) all business associates of the Contractor:
    - (i) who are partners, directors, or officers in the same business entity as the Contractor;

- (ii) who have authority to make decisions or establish policies in the same business entity as the Contractor; or
  - (iii) who directly or indirectly own at least 10% in the same business entity as the Contractor.
- (7) **“Representative”** means any person or entity acting on behalf of the Contractor, and includes all employees, owners, partners, directors, officers, board members, subcontractors, and agents, as well as any individuals with authority to establish policies or make decisions for the Contractor. “Volunteers” are not “representatives” and are not required to be included in the Contractor’s Disclosure Statement unless they are board members or officers or are substantially involved in the Contractor's decision-making processes.
- (8) **“Volunteer”** means a person who donates services to the Contractor without compensation except for expenses incurred (such as meals and travel costs).
- b. **Compliance with the Ethics Acts.** The Contractor shall comply at all times with the applicable provisions of the Ethics Acts.
- c. **Contractor Conflict of Interest Policy and Internal Review.** The Contractor shall implement a written policy that requires:
  - (1) Its representatives to submit a disclosure statement upon hire and annually thereafter;
  - (2) Its representatives to immediately disclose in writing to the Contractor all existing, potential, and contemplated conflicts of interest as they arise.
  - (3) Annual review of all disclosure statements and its own operations to reasonably assure DHS that the Contractor avoids prohibited conflicts of interest.
  - (4) Disclosure statements to be maintained in its personnel files.
  - (5) The Contractor to train its representatives regarding:
    - (a) The conflict of interest concept and the certification/disclosure requirements of this Contract; and
    - (b) The applicable provisions of the Ethics Acts.
- d. **Restrictions on Conflicts of Interest.** Transactions involving Conflicts of Interest are prohibited to the extent they are the result of undue influence, or have the potential to result in increased costs, decreased performance, the appearance of impropriety, or any other disadvantage to DHS. Conflicts of Interest can occur in one of three ways:

- (1) **Dual Employment.** Conflicts of interest can occur when a Contractor's representative is also employed by the State of Utah or by another contractor's representatives.
- (2) **Related-Party Transactions.** Conflicts of interest occur when the Contractor makes payments to a related party using money obtained from DHS through this Contract. Conflicts of interest also occur when transactions, which affect the performance of this Contract, are made between the Contractor and a related party, whether or not payments are involved.
- (3) **Independent Judgment Impaired.** Conflicts of interest occur when a Contractor's representative participates in any transaction on the Contractor's behalf and has a significant relationship or shared interest with another party to the transaction, which could affect the representative's ability or willingness to exercise independent judgment, and which may affect the performance of this Contract. Independent judgment may also be impaired when the Contractor or the Contractor's representative is involved in any administrative or legal action pending against the State, DHS, or any of their officers or employees.

e. **Disclosing Conflicts of Interest to DHS:**

- (1) **Requirements for *Governmental Entities*.** Before entering into this Contract or a subcontract related to this Contract, and annually thereafter, a governmental Contractor and any *governmental* subcontractors shall:
  - (a) Submit to DHS a written certification that they maintain a written policy as required above, monitor for compliance with the conflict of interest provisions of this Contract, and reasonably assure DHS that representatives (including any non-governmental subcontractors) with a potential conflict of interest do not:
    - (i) make or influence decisions or set policies that affect this Contract;
    - (ii) monitor the performance of this Contract; or
    - (iii) become involved in or otherwise benefit from the performance of this Contract; and
  - (b) Disclose to DHS any existing or potential conflicts of interest that relate to this Contract or the services provided pursuant to this Contract by submitting a Disclosure Statement in accordance with the requirements for non-governmental entities, and complying with the requirements regarding the continuing duty to disclose these conflicts of interest.
- (2) **Requirements for *Non-Governmental Entities*:** Before entering into this Contract, or a subcontract related to this Contract, a non-governmental Contractor shall submit a Disclosure Statement to DHS in which the Contractor or, when applicable its subcontractor, discloses any existing or potential conflicts of interest, including all information required by the Ethics Acts and this Contract.

- (a) **For Conflicts of Interest Involving Dual Employment**, the following information is required:
  - (i) the name of the representative engaged in dual employment;
  - (ii) the titles or positions held by the representative engaged in dual employment;
  - (iii) the representative's decision-making or monitoring authority with the employing entities, and how that representative's authority affects this Contract or any subcontract relating to this Contract; and
  - (iv) the measures taken to avoid potentially adverse effects resulting from the representative's dual employment.
  
- (b) **For Conflicts of Interest involving Related-Party Transactions or Independent Judgment Impaired**, the following information is required:
  - (i) the name of the representative having the conflict of interest;
  - (ii) the name of the other party to the conflict of interest;
  - (iii) the relationship between the individuals identified in (i) and (ii) above;
  - (iv) the nature and value of the interest (if any) held by the representative in the other business entity;
  - (v) a description of the transaction to which the conflict of interest applies and the dollar amount involved (if any);
  - (vi) the decision-making or monitoring authority of the representative and the party identified in (ii) above, with respect to the applicable transaction or decision;
  - (vii) the potential effect of the conflict of interest on this Contract or any subcontract relating to this Contract; and
  - (viii) the measures taken by the Contractor to avoid potentially adverse effects resulting from the identified parties' relationship.
  
- (c) If the Contractor has no conflicts of interest, the Contractor shall so indicate on the Disclosure Statement. By submitting a Disclosure Statement, the Contractor is certifying to DHS that it has checked its organization and has required its representatives to disclose their conflicts of interest, and that it has disclosed all known conflicts of interest to DHS.

f. **Continuing Duty to Disclose Conflicts of Interest.** The Contractor and its subcontractors have a continuing duty to immediately review updated Disclosure Statements and submit a copy to DHS whenever an existing or potential Conflict of Interest is disclosed. The Contractor shall require its subcontractors to provide an updated Disclosure Statement to the Contractor if at any time during the term of this Contract they contemplate any transaction involving a potential conflict of interest, or hire or affiliate with any individual with an existing or potential conflict of interest, or discover any existing conflict of interest.



- g. **Monitoring Compliance.** In addition to the remedies outlined in this Contract, DHS retains the right to do any of the following if DHS determines that a conflict of interest may exist:
- (1) Investigate any potential conflict of interest;
  - (2) Require further information from the Contractor or the subcontractor;
  - (3) Require specific remedial action; or
  - (4) Disapprove identified transactions or require repayment of identified transactions.
15. **ANTI-BOYCOTT ISRAEL ACT:** If this contract has a total value of \$100,000 or more, and if the Contractor has ten or more employees, the Contractor certifies that it is not currently engaged in a boycott of the State of Israel and that it will not engage in a boycott of the State of Israel for the duration of the contract. For purposes of this term, "Contractor" includes any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Contractor.

## **SECTION D: ACCESS TO RECORDS, COMPLIANCE MONITORING, AND RECORD KEEPING RESPONSIBILITIES**

1. **ACCESS TO RECORDS AND MONITORING OF PERFORMANCE:** DHS shall have immediate access to all records relating to this Contract, and the Contractor shall not limit or interfere with DHS' access rights.

DHS shall have the right to monitor the Contractor's performance pursuant to this Contract. Monitoring of Contractor's performance will be at the complete discretion of DHS. Performance monitoring may include both announced and unannounced visits. The Contractor shall allow independent auditors, state and federal auditors, or contract reviewers to have access to any records related to this Contract including all personnel, training, client, treatment, and financial records (such as accounting records and supporting documentation) for audit review and inspection.

2. **RECORD-KEEPING AND REPORTING REQUIREMENTS:** The Contractor shall maintain or supervise the maintenance of all records necessary for the proper and efficient operation of the programs covered by this Contract including, as applicable, records relating to screenings, assessments, applications, determination of clients' eligibility, the provision of services, treatment, administrative costs, statistics, fiscal operations, and any other records necessary for complying with the reporting and accountability requirements of this Contract.
3. **RETENTION OF RECORDS:** The Contractor shall retain all records related to this Contract for at least the following periods of time. For records related to youth offenders, the Contractor shall comply with Utah Code §62A-7-108.5.
- a. **Records Relating to Adult Clients:** The Contractor shall retain all adult client records (including records that support Title XIX reimbursements) for at least six years from the date of last service to the adult client.

- b. **Records Relating to Child Clients:** The Contractor shall retain all records relating to clients under 18 years old (including records that support Title XIX reimbursements) for at least six years from the date of last service to the child client, or until the child client reaches the age of 22, whichever period is longer.
- c. **Administrative Records:** The Contractor shall retain all administrative records relating to this Contract (including records that support Title XIX reimbursements) for at least six years after DHS makes the last payment on this Contract.
- d. **Discontinued Operations:** If the Contractor discontinues its programs or ceases to provide services pursuant to this Contract, the Contractor shall protect DHS access rights by implementing one of the following options:
  - (1) Transfer the client records to a successor agency or entity which has:
    - (a) entered into a contract with DHS to provide such services formerly provided by the Contractor; and
    - (b) agreed to provide DHS with the same access to the records as required under the Contractor's contract with DHS; or
  - (2) Deliver the client records to an office within the Contractor's organization pursuant to an arrangement by which the Contractor authorizes DHS to have continuing immediate access to the records.
  - (3) With the prior written consent of DHS, which may be withheld for any reason, deliver the client records to DHS.
  - (4) Alcohol and Drug Abuse Patient Records: If the Contractor is bound by the requirements of 42 C.F.R. Part 2 and discontinues its alcohol or drug abuse program or ceases to provide its services pursuant to this Contract, the Contractor shall comply with the following requirements before destroying the records of any patients served pursuant to this Contract:
    - (a) the Contractor shall notify DHS in writing at least 30 days before it discontinues its operations or ceases to provide its services;
    - (b) upon request from DHS, the Contractor shall give each of its alcohol and drug abuse patients a consent form which meets the requirements of 42 C.F.R. § 2.31, and which authorizes the Contractor to transfer its patient records to DHS; and
    - (c) upon obtaining signed consent forms from patients, the Contractor shall deliver the consenting patients' records to DHS.
- e. **Audits and Litigation:** The Contractor shall maintain all records related to any audits initiated by federal and state auditors or to any pending litigation until six years after all audits are completed or litigation is resolved, including any related appeals or the time for

appeal has expired, or for six years from the date of termination of this Contract, whichever is longer.

- f. **Method for Destruction of Client Records:** Client records which may be destroyed pursuant to this Contract must be cross-shredded or burned to protect client confidentiality. In the case of electronic records, the Contractor shall use a technique of destroying the records that adequately prevents unauthorized persons from reading or accessing the records.

- 4. **PROTECTING THE CONFIDENTIALITY OF CLIENT RECORDS:** Client records are confidential. The Contractor shall restrict access to client records in accordance with state and federal laws. Client records include, but are not limited to, hard copy records, electronic data, audio and video tapes, digital files, photographs, scans, and other images. The Contractor shall, at a minimum, maintain all client records in locked rooms or cases or in password-protected electronic files. If records are transported or contained on any electronic medium (including but not limited to, computers, tablets, smart phones, zip-drives, etc.) the medium must be password protected. The Contractor shall not use or disclose any client information except as specifically provided by this Contract or as required by law. The Contractor's representatives shall have access to only those portions of the records directly related to their work assignments.
- 5. **LOSS OR DISCLOSURE OF CLIENT RECORDS OR INFORMATION:** The Contractor shall have and comply with policies and procedures to protect confidential client records and information from loss, unauthorized disclosure, or data breaches (hereinafter collectively referred to as "loss"), and shall make those policies available to DHS. The policies and procedures must address how client records and information will be maintained, transmitted, stored, and secured to protect against any loss. The policies and procedures must also address the steps that will be taken in the event of any loss to notify, protect, and reimburse those impacted by the loss against potential damages as well as to prevent future losses.

The Contractor shall be responsible for any loss of client records or client information by it or its representatives and for any and all costs, remediation (including, but not limited to, credit monitoring), and damages associated with such loss. In the event of a loss, in addition to any actions required by the Contractor's policies and procedures, the Contractor shall notify the following individuals of the loss no later than 24 hours after it is discovered:

- a. The DHS signatory on this Contract;
- b. The DHS Risk Manager; and
- c. The client or the client's parent(s) or legal guardian.

## **SECTION E: SUBCONTRACTING, ASSIGNMENT, AMENDMENTS, AND DISPUTE RESOLUTION PROCEDURES**

### **SUBCONTRACTS:**

- a. **Definition of "Subcontractor":** As used in this Contract, "subcontractor" means an individual or entity that has entered into an agreement with the Contractor to perform

services for which the Contractor is responsible pursuant to the terms of this Contract. "Subcontractor" also refers to individuals or entities that have entered into agreements with any subcontractor **if** those individuals or entities perform any of the subcontractor's duties pursuant to this Contract.

b. **Is Subcontracting Allowed:**

The Contractor may not subcontract to provide the services specified in this Contract.

c. **When Subcontracting Is Allowed:** If Contractor is allowed to subcontract under Paragraph 1.b. above, the following provisions apply:

- (1) **Contractor Responsibilities Regarding Subcontracts.** The Contractor retains full responsibility for contract compliance, whether the services are provided directly or by a subcontractor.
- (2) **Provisions Required in Subcontracts.** When the Contractor subcontracts and pays the subcontractor for goods or services through federal and state funds, the Contractor shall, at a minimum, include provisions in its subcontract that require the subcontractor to comply with all:
  - (a) provisions of this Contract including the insurance and indemnification provisions; and
  - (b) applicable laws and contract provisions identified in 45 C.F.R. § 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments".

2. **CONTRACT ASSIGNMENT:** The Contractor may not assign its benefits or obligations pursuant to this Contract to any other entity without the prior written consent of both the DHS Director and the DHS Purchasing Agent, which may be withheld for any reason.

- a. No contract assignment will be binding upon DHS until the following requirements have been met:
- (1) The Contractor submits its request to assign the Contract to DHS on the "DHS Consent to Contract Assignment" (Contract Assignment) form;
  - (2) The proposed Assignee submits all documentation required by the original procurement, demonstrating that it meets all contract qualifications and has the capability to provide all contract services;
  - (3) DHS evaluates the proposed Assignee's documentation and makes a recommendation to the DHS Purchasing Agent as to whether the proposed Assignee is qualified and capable of complying with all Contract requirements;

- (4) The DHS Purchasing Agent reviews DHS recommendation and determines in writing that the assignment does not appear to violate procurement rules;
  - (5) The DHS Director approves the assignment by signing the "Contract Assignment" form.
- b. Upon execution of the Assignment Agreement between the assignor and assignee and written approval by DHS as evidenced by execution of the "DHS Consent to Contract Assignment" form:
- (1) Assignor shall have no further authority to perform pursuant to this Contract and shall make no claim for benefits arising from this Contract; and
  - (2) The DHS Consent to Contract Assignment form will be made a part of this Contract by amendment.

Notwithstanding any agreement between the assignor and assignee, DHS may hold the assignor and assignee jointly and severally responsible for all obligations, losses, damages, injuries, liabilities, suits, claims, and proceedings arising out of the performance of this Contract. This provision survives the termination of this Contract.

3. **CONTRACT AMENDMENTS**: The parties may modify this Contract only by written amendment signed by the parties and approved by the DHS Bureau of Contract Management. Any amendments will be attached to the original signed copy of this Contract.
4. **REMEDIES**: If DHS determines that the Contractor or a subcontractor has failed to comply with any of the provisions of this Contract, DHS may do any of the following:
  - a. **Disallow Contractor Expenditures.** DHS may disallow the Contractor's and the subcontractor's expenditures and adjust its payments to the Contractor by deducting such disallowed expenditures.
  - b. **Withhold Payment.** DHS may withhold funds from the Contractor for contract non-compliance, misuse of public funds, or failure to comply with state and federal law.
    - (1) If an audit finding or judicial determination is made that the Contractor or its subcontractor misused public funds, DHS may also withhold funds otherwise allocated to the Contractor to cover the costs of any audits, attorney's fees, and other expenses. DHS shall give the Contractor prior written notice that the payment(s) will be withheld. The notice will specify the reasons for such withholding. DHS shall inform the Contractor whether any amounts withheld may be released and, if so, the actions that the Contractor must take to bring about the release of any amounts withheld.
    - (2) If an independent CPA audit or DHS review determines that the payments made by DHS to the Contractor were incorrectly paid or were based on incorrect information from the Contractor, DHS may adjust or withhold the Contractor's payments for the remainder of the contract period or until DHS fully recoups the funds.

- c. **Require Repayment.** Upon written request by DHS, any overpayments, disallowed expenditures, excess payments, or questioned costs are immediately due and payable by the Contractor. In the alternative, DHS shall have the right to withhold any or all subsequent payments pursuant to this Contract until DHS fully recoups these funds. In such cases, the Contractor shall not reduce the level of services required by the Contract.
- d. **Require Corrective Action.** The Contractor shall comply with the terms of any corrective action plan required by DHS.
- e. **Client Placements.** DHS may remove clients from, suspend client placements with, and/or suspend client referrals to the Contractor if DHS determines the Contractor is not complying with the terms of this Contract. DHS will provide written notice to the Contractor prior to implementing a suspension. The notice will advise the Contractor of any actions required of it to lift the suspension.
- f. **Terminate the Contract.** DHS may terminate this Contract in accordance with the contract termination provisions outlined below.
- g. **Pursue Any Legal Remedy.** DHS and the Contractor may avail themselves of all remedies allowed by state or federal law.

5. **CONTRACT DISPUTES - ADMINISTRATIVE REVIEW:** Prior to pursuing other legal remedies, the Contractor shall appeal any contract dispute with DHS by filing a written appeal with the DHS Deputy Director for Support Services within 30 days of the disputed DHS action or decision. The Contractor's written appeal must identify the Contractor, the contract number, the disputed issue, pertinent contract provisions or legal authorities, and the contact person for the Contractor. The Contractor shall also provide a copy of its appeal to the Director of DHS.

The DHS Deputy Director shall have 60 days to issue DHS' written response to the Contractor's appeal. The Deputy Director may designate another DHS employee to review and respond to the Contractor's appeal.

6. **CONTRACT TERMINATION:**

- a. **Right to Terminate.** Either party may terminate this Contract, in whole or in part, at any time, with or without cause, in advance of the Contract's expiration date by:
  - (1) Giving the other party 30 days written notice, or
  - (2) Mutual agreement in writing.
- b. **Immediate Termination.** If the Contractor's violation of this Contract creates or is likely to create a risk of harm to the clients served pursuant to this Contract, or if any other provision of this Contract allows DHS to terminate the Contract immediately for a violation of that provision, DHS may terminate this Contract immediately by notifying the Contractor in writing.

- c. **Cooperative Efforts to Protect the Clients.** If either party elects to terminate this Contract, both parties shall use their best efforts to provide for uninterrupted client services.
  - d. **Payments after Termination.** Upon termination of this Contract, the parties shall use the financial and accounting arrangements in this Contract to process payments for any undisputed services that the Contractor rendered before termination. The Contractor shall have no claim for services not rendered. DHS shall not pay Contractor for any of the Contractor's obligations or expenses that extend beyond the termination date. **This provision survives the termination of this Contract.**
  - e. **Records Retention and Access after Termination.** The Contractor shall comply with the provisions of this Contract relating to the Contractor's record-keeping responsibilities and DHS access to records, and shall ensure that the Contractor's staff properly maintains all records. **This provision survives the termination of this Contract.**
7. **ATTORNEYS' FEES AND COSTS:** If either party seeks to enforce this Contract upon a breach by the other party, or if one party seeks to defend itself against liability arising from the negligence of the other party, the unsuccessful party shall pay the prevailing party for all its court costs and reasonable attorneys' fees.
8. **GRIEVANCE PROCEDURES FOR CLIENTS AND APPLICANTS:** The Contractor shall establish a grievance system for the clients and applicants of the programs covered by this Contract.
- a. The Contractor shall notify each client and applicant in writing that clients and applicants have the right to present the Contractor with their grievances including, but not limited to:
    - (1) denial of services covered by this Contract;
    - (2) exclusion from a program covered by this Contract; or
    - (3) inadequacies or inequities in the programs and services provided pursuant to this Contract.
  - b. The Contractor shall establish and maintain a tracking system identifying the nature and outcome of each grievance.
  - c. If the Contractor denies a grievance, or fails to respond to a grievance in a timely fashion, the Contractor shall notify the client or applicant that they may contact the DHS Director in writing. The DHS Director or designee will attempt to resolve the grievance.

## PART II: PERFORMANCE MEASURES AND CLIENT OUTCOMES

The Contractor shall comply with the following objective based performance requirements:

1. **Performance Based Outcome Measures:** The Contractor shall cooperate and collaborate with DHS to assess and determine how closely its program(s) meets known principles of effective interventions based on empirically derived principles.
2. **Client Centered Objectives.** If a program or service covered by this Contract requires the development of client treatment plans, the treatment plans must include individualized treatment objectives that address the needs of the client. The treatment plans must prescribe an integrated program of therapies, activities, and experiences to meet the client's treatment objectives and include reasonable measures to evaluate and ensure the Contractor meets the client's treatment objectives.
3. **Internal Quality Management.** The Contractor shall develop, implement, and maintain an internal quality management system to evaluate the Contractor's programs as required in the Scope of Work of this Contract, and establish a system of self-correcting feedback that may be externally validated by DHS.
4. **Customer or Client Satisfaction Surveys:** The Contractor understands that DHS is committed to providing client-oriented services, and that DHS often conducts client-satisfaction surveys to ensure that services are appropriate for the clients served. The Contractor and/or its subcontractor, therefore, agree to cooperate with all DHS-initiated client or customer feedback activities.
4. **Performance Based Outcome Measures:** The Contractor shall cooperate and collaborate with DHS and the University of Utah and its staff (when referred to the Contractor by DHS) to assess and determine:
  - a. How closely its program(s) meet known principles of effective interventions using evidence-based practices;
  - b. The effectiveness of the Contractor's program(s) in improving outcomes for DHS Clients; and/or
  - c. The degree to which the Contractor is using evidenced-based practices.

If through this process the Contractor's program is found to be lacking in any of the above areas, DHS and/or the University of Utah may, at DHS's sole discretion, provide the Contractor with free technical assistance to improve its program's effectiveness.



## PART III: PAYMENT TERMS AND BILLING INFORMATION

### SECTION A: PAYMENT

Payments made to the Contractor pursuant to the terms of this Contract will be the Contractor's total compensation for Contract services provided. Payments will be made only if clients are placed with, are referred to, or select the Contractor for services pursuant to this Contract AND only if the Contractor actually provides contract services to the clients.

### SECTION B: PAYMENT RATES

The Contractor shall be paid for services provided pursuant to this Contract based on the rates in the following table:

**PAYMENT RATE TABLE**

Service Code	Service Description	Unit of Service	Rate
HLR	High-Level Residential – <i>Congregate Care of 6 Beds or More</i>	Daily	\$316.00
ALR	Absence Code for HLR	Daily	\$306.00
HLA	High Level Additional Staffing	Daily	\$162.00
CTP	Contracted Transportation	Mile	\$0.42
CTH	High-Level Transportation	Mile	\$2.00

### SECTION C: BILLING REQUIREMENTS

1. **BILLING FOR CONTRACT SERVICES:** To obtain payment from DHS for the services provided pursuant to this Contract, the Contractor shall use the DHS 520 Billing Form, or other billing form provided by DHS. The Contractor shall bill DHS only for actual units of service delivered, and shall maintain records that adequately support the delivery of services.
2. **PAYMENT OPTIONS FOR RESIDENTIAL CARE SERVICES:**
  - a. **Client Absences:** If the Scope of Work of this Contract states that the Contractor may receive payment for client absences from a residential placement, the Contractor shall include appropriate information in the client's records (such as the reason for the client's absence and the client's whereabouts during the absence). In addition, if the Scope of Work of this Contract requires the Contractor to obtain written approval from DHS in order to obtain payment for a client's absence, the Contractor shall include a copy of such approval in the client's file.

Payment for client absences from a residential placement is prohibited in the following situations: (1) The client has left the Contractor's residential program and there is no plan to return the client to the Contractor's residential program and, therefore, no need to hold the slot; or (2) the standard rate already includes a factor for absences.

- b. **Billing for First and Last Days:** DHS will reimburse the Contractor for both the first and last days of service for clients in residential care. The level of compensation for the first and last days of service is specified in the Payment Rate Table above.

3. **BILLING PERIODS AND DEADLINES:** DHS may delay or deny payment to the Contractor for billings or claims for services that do not meet the billing deadlines outlined below.

- a. **Contractor Billing Period:** The Contractor's billing period is monthly.

- b. **Ongoing Billings:** The Contractor shall submit all billings and claims for services rendered during a given billing period within twenty (20) days after the last date of that billing period, **EXCEPT** that the Contractor shall submit all billings for services performed on or before June 30<sup>th</sup> of a given fiscal year pursuant to paragraph c. below.

- c. **State Fiscal Year-End Billings:** The State Fiscal Year is from July 1<sup>st</sup> through June 30<sup>th</sup>. The Contractor shall submit all billings for services performed on or before June 30<sup>th</sup> of a given fiscal year **no later than July 14<sup>th</sup>** of the following fiscal year, regardless of the Contractor's billing period or the expiration or termination date of this Contract.

- d. **Final Contract Billings:** The Contractor shall submit all final billings under this Contract within 14 days of expiration or termination of the Contract, regardless of the Contractor's billing period.

#### **SECTION D: ADDITIONAL REQUIREMENTS**

1. **UNIFORM BILLING PRACTICES:** The Contractor guarantees that the amounts it charges for services to Clients pursuant to this Contract will not be higher than the amounts the Contractor charges others for comparable services.

2. **NO IMPOSITION OF FEES:** The Contractor shall not charge clients for any services provided pursuant to this Contract, except as expressly authorized in Scope of Work of this Contract.

3. **SUPPORTING DOCUMENTATION:** The Contractor shall maintain the documentation necessary to support the services and/or costs billed by the Contractor and shall submit such documentation with the billings if requested. The Contractor shall store and file required documentation in a systematic and consistent manner.

4. **QUESTIONED COSTS:** DHS may consider any billing by the Contractor to be a questioned cost if the billing is not supported by proper documentation verifying that the amounts billed for services provided or costs incurred pursuant to this Contract were actually provided or incurred in accordance with Contract provisions.

5. **THIRD-PARTY RESOURCES:** In addition to funds received from DHS, various other sources of funding, including Medicaid and private insurance, may be available to the Contractor for services delivered pursuant to this Contract. Income from other state, federal, and county programs may also be available. All sources of funding other than funding received from DHS are referred to below as "third-party resources."

a. **Principles and Requirements:** Where third-party resources are available, the parties are bound by the following principles and requirements:

- (1) The Contractor shall not obtain duplicate recovery from DHS and third-party resources for services delivered pursuant to this Contract.
- (2) Except as specified in subsection b. below ("Exceptions to the Foregoing Principles and Requirements"), the Contractor shall seek payment from third-party resources for services delivered pursuant to this Contract.
- (3) Upon successful recovery of funds from third-party resources, the Contractor shall reimburse DHS for the full amount of the recovery.
- (4) If the amount of the recovery is greater than the amount that the Contractor received from DHS for the service(s) covered by the recovery, the Contractor is required to reimburse DHS only for the actual amount that the Contractor received from DHS for the service(s) covered by the recovery.

b. **Exceptions to the Foregoing Principles and Requirements:**

- (1) *Medicaid Enhancement; Home and Community-Based Services.* If the Contractor has opted to have DHS bill Medicaid on its behalf, the Contractor shall not seek reimbursement from Medicaid if the client is eligible for Medicaid Enhancement or for Home and Community-Based Services. Instead, DHS will pay the Contractor for services delivered, and DHS will bill the third-party resources directly, and the DHS Office of Recovery Services or Medicaid will then pursue reimbursement for amounts that DHS paid to Contractor for such services.
- (2) *No "Incentive Amount" for Budget Based Contracts.* No Incentive Amount is envisioned for budget-based contracts. In such budget-based contracts, the Contractor may bill DHS for the cost of collecting from third-party resources only if the Contractor provides DHS with adequate documentation to show that the costs were necessary, reasonable, and actually incurred by the Contractor. The Contractor shall maintain financial records to support such costs for auditing purposes.

6. **REDUCTION OF FUNDS:**

If the State becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render the Contractor's delivery or performance under this Contract impossible or unnecessary, DHS may terminate this Contract in whole or in part. If the legislature does not appropriate funds for paying the State's obligations

on this Contract, or if funding to the State is reduced due to an order by the Governor, or is required by State law, or if federal funding (when applicable) is not provided, or requires any return or “giveback” of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if the Executive Director of DHS decides to reduce the payments pursuant to this Contract, DHS may terminate this Contract or proportionately reduce the services required by this Contract and the amounts to be paid by DHS to the Contractor for such services.

## **PART IV: ACCOUNTING REQUIREMENTS AND FINANCIAL COMPLIANCE**

### **SECTION A: COST PRINCIPLES**

1. **APPLICABLE COST PRINCIPLES:** Regardless of the Contractor’s entity type or the source of its funding, the Contractor shall comply with and determine allowable costs in accordance with the federal cost accounting principles described in 2 CFR Part 200 *et seq.* as well as any other applicable Parts.
2. **DHS GENERAL COST PRINCIPLES:** In addition to the federal cost principles, the Contractor shall comply with the following DHS general cost principles that apply to all types of DHS contracts.
  - a. **Related Party Costs:** The Contractor shall not make payments to related parties (as defined in the Conflict of Interest provisions of this Contract) in any category of expenditure (Administrative Costs, Capital Expenditures, or Program Costs) without the prior written consent of DHS. Payments to related parties may include, but are not limited to: salaries, wages, compensation under employment or service agreements, or payments under purchase, lease, or rental agreements. Payments made by the Contractor to related parties without prior written consent may be disallowed and require repayment to DHS.
  - b. **Personal Expenses:** DHS will not reimburse Contractors for personal expenses. Travel that is not business related is an example of a personal expense that is not allowable.

### **SECTION B: CONTRACTOR'S COST ACCOUNTING SYSTEM**

1. At a minimum, the Contractor's accounting system must provide for a General Ledger and cost accounting records adequate to assure that costs incurred pursuant to this Contract are reasonable, allowable, and allocable to Contract objectives, and separate from costs associated with other business activities of the Contractor. The Contractor’s accounting system must also provide for the timely development of all necessary cost data in the form required by the Contract.
2. If the Contractor must meet federal, state, or DHS reporting requirements, the Contractor’s accounting system must be capable of producing the information and documentation necessary to comply with those reporting requirements.

## **SECTION C: QUESTIONED COSTS**

For purposes of this Contract, "Questioned Costs" means costs that are questioned because of monitoring or audit findings including, but not limited to, findings:

1. Which result from a violation or possible violation of a provision of law, statute, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of state or federal funds, including the terms and conditions of a federal award as well as funds used to match federal funds;
2. Where the costs at the time of the audit are not supported by adequate documentation; or
3. Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

## SECTION E: FINANCIAL REPORTING REQUIREMENTS

1. **DEFINITIONS:** The following definitions are provided for the Contractor's convenience and so that the Contractor may comply with its federal, state, and DHS financial reporting requirements:
  - a. "CFR" means the Code of Federal Regulations.
  - b. "Federal Audit Clearinghouse" is as defined in 2 CFR § 200.36.
  - c. "Federal Awards" is as defined in 2 CFR § 200.38.
  - d. "Financial Reports" means audits, reviews, compilations, statements of functional expenses, balance sheets, income statements, statements of cash flow, or the preparer's notes to the financial reports, etc.
  - e. "GAAP" means Generally Accepted Accounting Principles, a combination of authoritative accounting principles, standards, and procedures (set by policy boards).
  - f. "GAAS" means Generally Accepted Auditing Standards, issued by the American Institute of Certified Public Accountants (AICPA).
  - g. "GAS/GAGAS" means Government Auditing Standards issued by the Comptroller General of the United States (also known as "Yellow Book" standards). GAS is often referred to as Generally Accepted Government Auditing Standards ("GAGAS"). GAGAS incorporates the generally accepted standards issued by the AICPA.
  - h. "OMB" means the federal Executive Office of the President, Office of Management and Budget.
  - i. "Pass-Through Entity" is as defined in 2 CFR § 200.74.
  - j. "Subrecipient" is as defined in 2 CFR § 200.93.
  - k. "Uniform Guidance" means the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" in 2 CFR Part 200 *et seq.*
2. **TYPE OF FINANCIAL REPORT REQUIRED.** Whether the Contractor is required to obtain and submit an annual audit or other type of financial report is determined by the Contractor's entity type and the amount and source of its funds, revenues, and/or expenditures during the Contractor's fiscal year.
3. **TYPE OF CONTRACTOR.** The Contractor is **not** a Subrecipient for federal reporting purposes under this Contract.
4. **COMPLIANCE WITH APPLICABLE FEDERAL AND STATE REPORTING REQUIREMENTS.** The Contractor shall comply with all applicable federal and state laws, rules, and requirements regarding financial reporting as set forth in the:

- a. Uniform Guidance, and
- b. Utah Code §51-2a-101 *et. seq.*

A summary of federal and state reporting requirements is provided in Table 1 below.

5. **COMPLIANCE WITH REPORTING REQUIREMENTS TO DHS.**

- a. The Contractor shall comply with all applicable financial reporting requirements to DHS as set forth in Table 2 below.
- b. **Extensions:** If the Contractor needs an extension to submit required reports to DHS, the Contractor shall submit a written request to the Bureau of Contract Management (BCM) Rate Manager at the following email:

dhsfinancialreports@utah.gov

Requests for extensions must include the following information:

- (1) The length of time for which the extension is requested;
- (2) The Contractor's justification for the requested extension; and
- (3) The name, phone number, and email address of the person requesting the extension.

Extensions will be granted at the sole discretion of the BCM Rate Manager.

**Table 1: Summary of Federal and State Annual Financial Reporting Requirements**

<b>Federal Reporting Requirements</b> <i>Per 2 CFR Part 200 (OMB Uniform Guidance)</i>	<b>Utah State Reporting Requirements</b> <i>Per Utah Code § 51-2a-201</i>	<b>Utah State Reporting Requirements</b> <i>Per Utah Code § 51-2a-201.5</i>
<p align="center"><b><u>TYPE OF ENTITY</u></b> Non-Federal Entities</p>	<p align="center"><b><u>TYPE OF ENTITY</u></b> Government Entities, School Districts, and Charter Schools</p>	<p align="center"><b><u>TYPE OF ENTITY</u></b> Non-Profit Corporations with Revenues or Expenditures of <b>MORE than \$25,000</b> in Federal Pass Through, State, or Local Funds as Defined in § 51-2a-201.5</p>
<p><b><u>TYPE OF FINANCIAL REPORT REQUIRED</u></b></p> <p>1. If <b>\$750,000 or more</b> in federal awards is expended, a <b>Single or Program Specific Audit</b> using GAGAS standards and prepared in accordance with the requirements of OMB Uniform Guidance is required, including:</p> <p>a. The <u>data collection form</u> described in § 200.512.</p> <p>b. The <u>Reporting Package</u> described in § 200.512 including:</p> <p>(1) <u>Financial statements</u> and schedule of expenditures of federal awards;</p> <p>(2) A <u>summary schedule of prior audit findings</u>;</p> <p>(3) The <u>auditor’s report(s)</u>; and</p> <p>(4) A <u>corrective action plan</u> for any current year audit findings.</p> <p>c. Any <u>Management Letter(s)</u> issued by the auditor.</p> <p>2. If <b>less than \$750,000</b> in federal awards is expended, no audit is required, <i>except as noted in § 200.503</i>, but records must be available for review or audit.</p>	<p><b><u>TYPE OF FINANCIAL REPORT REQUIRED</u></b></p> <p>The reporting requirements for entities in this category may be found on the Utah State Auditor’s website at:</p> <p align="center">auditor.utah.gov</p> <p>Reporting requirements depend on the entity’s total annual revenues or expenditures which are tiered as follows:</p> <p>1. Revenues or expenditures are <b>\$1,000,000</b> or more (audit).</p> <p>2. Revenues or expenditures are <b>less than \$1,000,000</b> as prescribed by the state auditor.</p>	<p><b><u>TYPE OF FINANCIAL REPORT REQUIRED</u></b></p> <p>The reporting requirements for entities in this category may be found on the Utah State Auditor’s website at:</p> <p align="center">auditor.utah.gov</p> <p>Reporting requirements depend on the entity’s total annual revenues or expenditures which are tiered as follows:</p> <p>1. Revenues or expenditures are <b>\$1,000,000 or more</b> (audit).</p> <p>2. Revenues or expenditures are <b>less than \$1,000,000 but at least \$350,000</b> (review).</p> <p>3. Revenues or expenditures are <b>less than \$350,000 but at least \$100,000</b> (compilation).</p> <p>4. Revenues or expenditures are <b>less than \$100,000 but greater than \$25,000</b> (fiscal report).</p>
<p><b>SUBMISSION REQUIREMENTS</b></p>		
<p>Reports must be submitted to the Federal Audit Clearinghouse within 30 calendar days after receipt of the auditor’s report(s), or nine months after the end of the audit period, whichever is earlier.</p>	<p><b>Government Entities:</b> Reports must be submitted to the State Auditor within 180 days after the Contractor’s fiscal year end.</p> <p><b>School Districts and Charter Schools:</b> Reports must be submitted to the Office of Education by November 30th and to the State Auditor by December 31st.</p>	<p>Reports must be submitted to the State Auditor within six months after the Contractor’s fiscal year end.</p>
<p><b>Disclaimer:</b> The information provided in this Table is summary information only. Any discrepancies between the requirements in this Table and the requirements in federal or state law or rule will be resolved in favor of the requirements in the applicable law or rule. The Contractor is advised to review the applicable law and rules or seek professional advice to determine whether it is subject to federal and/or Utah State financial reporting requirements and if so, the type of report(s) required for compliance.</p>		



**Table 2: Annual Financial Reporting Requirements to DHS**

TYPE OF ENTITY				
Entities with a Federal Reporting Obligation Pursuant to the OMB Uniform Guidance	Government Entities with a Utah State Reporting Obligation Pursuant to Utah Code § 51-2a-201	Nonprofit Corporations Subject to Utah Code § 51-2a-201.5	All Entities Receiving Pass Through Money as Defined in Utah Code § 63J-1-220	All Entities that DO NOT have a Federal or State Reporting Obligation Pursuant to Table 1 Requirements shall submit to DHS the required report indicated below:
No additional reporting obligation for DHS	No additional reporting obligation for DHS	<p><b>Shall Annually Disclose to DHS:</b></p> <ol style="list-style-type: none"> <li>Whether the nonprofit met or exceeded the dollar amounts listed in § 51-2a-201.5(2) in the previous fiscal year of the nonprofit; and</li> <li>Whether the nonprofit anticipates meeting or exceeding the dollar amounts listed in § 51-2a-201.5(2) in the fiscal year the money is disbursed.</li> </ol>	<p><b>Shall Annually Provide to DHS:</b></p> <ol style="list-style-type: none"> <li>A written description and an itemized report detailing the expenditure of the state money, or the intended expenditure of any state money that has not been spent; and</li> <li>A final written itemized report when all the state money is spent.</li> </ol>	<p><b>If \$1,000,000 or MORE</b> is received from DHS in the Contractor's fiscal year:</p> <p>A CPA Audit performed in accordance with GAGAS. Also, the auditor's Management Letter must be included if the audit report disclosed any audit findings.</p>
				<p><b>If LESS THAN \$1,000,000 but at least \$750,000 or MORE</b> is received from DHS in the Contractor's fiscal year:</p> <p>A CPA Review.</p>
				<p><b>If LESS THAN \$750,000 but at least \$500,000 or MORE</b> is received from DHS during the Contractor's fiscal year:</p> <p>A CPA Compilation.</p>
				<p><b>If LESS THAN \$500,000 but at least \$250,000 or MORE</b> is received from DHS during the Contractor's fiscal year:</p> <p>Financial statements prepared by the contractor or by an outside accounting or bookkeeping service.</p>
				<p><b>If LESS THAN \$250,000</b> is received from DHS during the Contractor's fiscal year:</p> <p>No report is required.</p>
				<b>SUBMISSION REQUIREMENTS</b>
See Table 1	See Table 1	Disclosure must be made to the DHS Contract Representative for this Contract <b>at the time of entering into this Contract</b> and annually thereafter <b>within six (6) months after the end of Contractor's fiscal year</b>	Reports must be submitted to the DHS Contract Representative for this Contract <b>no later than July 31st each year or within 30 days of the expenditure of all state funds, whichever is earlier</b>	<p><b>Reports must be submitted within six (6) months after the end of Contractor's fiscal year to:</b></p> <p align="center"><a href="mailto:dhsfinancialreports@utah.gov">dhsfinancialreports@utah.gov</a></p> <p align="center">OR</p> <p align="center">Department of Human Services Bureau of Contract Management Attention: Rate Manager 195 N. 1950 W. Salt Lake City, UT 84116</p>

## PART V: COMMONLY APPLICABLE LAWS

### SECTION A: COMPLIANCE WITH ADMINISTRATIVE GRANTS

The Contractor is bound by federal law, which establishes fiscal and administrative rules applicable to entities that receive federal grants. These rules are published in OMB Circular A-110 and in the OMB Common Rule, which is codified in 45 C.F.R. Part 92 (1999) and 45 C.F.R. Part 74.

### SECTION B: COMPLIANCE WITH STATE AND FEDERAL LAWS

The Contractor is required to comply with all anti-discrimination and drug-free workplace laws, and all laws governing research involving human subjects. When the Contractor receives state or federal funds pursuant to this Contract, certain state and federal requirements may also apply. The Contractor shall comply with these laws and regulations to the extent they apply to the subject matter of this Contract and are required by the amount of state and federal funds involved in this Contract.

Table 1, “Federal and State Laws,” is provided as a reference guide to various laws and requirements. The information contained in this table is not exhaustive and the Contractor understands that it is obligated to seek independent legal advice in these matters.

**Table 1: Federal and State Laws**

Description of Act	Applicable Federal Law	Applicable State Law
<b>Discrimination and Employment Related Laws</b>		
Age Discrimination Act of 1975	42 U.S.C. §§ 6101-6107; 45 C.F.R. Part 91	
Americans with Disabilities Act	42 U.S.C. § 12101 <i>et seq.</i> ; 28 C.F.R. Part 35, Part 39	
Civil Rights Act of 1964 as amended, Title VI	45 C.F.R. Part 80 42 U.S.C. § 2000d <i>et seq.</i>	
Civil Rights Act of 1964, Title VII	42 U.S.C. § 2000e <i>et seq.</i>	Utah Code § 13-7-1 <i>et seq.</i>
Contract Work Hours and Safety Standards Act	40 U.S.C. §§ 3701-3704; 29 C.F.R. Part 5	
Copeland Anti-Kickback Act	45 C.F.R. 2543.82, 18 U.S.C. § 874, 29 C.F.R. Part 3	
Davis-Bacon Act	40 U.S.C. § 3142; 29 C.F.R. Part 5	
Drug-Free Workplace Requirements	41 U.S.C. § 701 through 707, Drug Free Workplace Act of 1988	Utah Code § 34-41-101 <i>et seq.</i> ; Utah Code § 34-38-1 <i>et seq.</i> ; Utah Code § 67-19-36 <i>et seq.</i> ; Utah Administrative Code, R477-14-1 <i>et seq.</i>
Education Amendments of 1972, Title IX	20 U.S.C. § 1681 <i>et seq.</i> ; 45 C.F.R. Part 86	
Employment Eligibility Verification	8 U.S.C. § 1324a	Utah Code § 63G-12-302
Equal Employment Opportunity	Exec. Order No. 11246 (1965), as amended by Exec. Order No. 11375; 41 C.F.R. Part 60	
Equal Pay Act	29 U.S.C. § 206(d)	
Fair Labor Standards Act	29 U.S.C. § 201 <i>et seq.</i>	

Description of Act	Applicable Federal Law	Applicable State Law
Immigration Control and Reform Act	8 U.S.C. § 1324	
Protection and Advocacy for Individuals with Mental Illness Act	42 U.S.C. § 10801 <i>et seq.</i>	
Public Health Service Act, Section 522 and Section 526	45 C.F.R. Part 84.53	
Rehabilitation Act of 1973, as amended, Section 504	29 U.S.C. § 794; 45 C.F.R. Part 84	
Utah Antidiscrimination Act -- (Includes the prohibition of unlawful harassment)		Utah Code § 34A-5-101, <i>et seq.</i>  (See also Utah Executive Order March 17, 1993, which prohibits sexual harassment of state employees and employees of public and higher education)
Utah Occupational Safety and Health Act		Utah Code § 34A-6-101, <i>et seq.</i>
<b>Property Laws</b>		
Energy Policy and Conservation Act	42 U.S.C. § 6322	
Federal Clean Air Act	42 U.S.C. § 7401 <i>et seq.</i>	Utah Code § 26-38-1, <i>et seq.</i>
Federal Water Pollution Control Act	33 U.S.C. § 1251 <i>et seq.</i>	
Flood Disaster Act of 1973 and other flood hazard provisions	42 U.S.C. § 4106	
National Environmental Policy Act of 1969 ("NEPA")	42 U.S.C. § 4321 <i>et seq.</i> ; 40 C.F.R. Part 1500 <i>et seq.</i>	
National Historic Preservation Act ("NHPA") of 1966	16 U.S.C. § 470, <i>et seq.</i> ; 36 C.F.R. Part 800, <i>et seq.</i>	
Pro-Children Act of 1994	20 U.S.C. § 6081, <i>et seq.</i>	
<b>Medicaid and Utah False Claims Reporting Laws</b>		
Civil False Claims Act	31 U.S.C. § 3729-3733 and Chapter 38	
Deficit Reduction Act of 2005	Public L. 109-171 (2006)	
Utah False Claims Act		Utah Code § 26-20-1 <i>et seq.</i>
Utah Protection of Public Employees Act		Utah Code § 67-21-1 <i>et seq.</i>
<b>Procurement Laws</b>		
Utah Procurement Code		Utah Code § 63G-6a-101 <i>et seq.</i>
Utah State Procurement Rules		Utah Administrative Code, Rule R33-1, <i>et seq.</i>
Debarment and Suspension	45 C.F.R. Part 76; Exec. Order No. 12549; and Exec. Order 12689	Utah Code § 63G-6a-904
<b>Miscellaneous Laws</b>		
Abuse Reporting Requirements		Utah Code § 62A-4a-403; Utah Code § 62A-3-305
Byrd Anti-Lobbying Amendment	31 U.S.C. § 1352; 45 C.F.R. Part 93	
Ethics Acts		Utah Code § 67-16-1 <i>et seq.</i> and § 10-3-1301 <i>et seq.</i>

Description of Act	Applicable Federal Law	Applicable State Law
Federal Funding and Accountability and Transparency Act (FFATA)	P.L. 109-282, as amended by Section 6202 of P.L. 110-252. Guidance issued by the Office of Management and Budget may be found in the Federal Register (Volume 75, No. 177, September 14, 2010, 2 CFR Part 170) that establishes reporting requirements.	
Government Records Access and Management Act (GRAMA),		Utah Code § 63G-2-101 <i>et. seq.</i>
Hatch Act	5 U.S.C. § 1501, <i>et. seq.</i>	Utah Code § 67-19-19
Health Insurance Portability and Accountability Act of 1996 (HIPAA)	45 C.F.R. Parts 160, 162, and 164	
Misusing Public Money or Public Property		Utah Code § 76-8-402; see also Utah Code § 76-1-601(14)(a)(ii)
Public Health Service Act, Section 474(a), Protection of Human Subjects	42 U.S.C. § 2899; 45 C.F.R. Part 46; 21 C.F.R. 50 & 21 C.F.R. 56	
Substance Abuse and Mental Health confidentiality of substance abuse and mental health records	42. U.S.C. § 290dd-2; 42 C.F.R. § 2 and 2a	
Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Government	45 C.F.R. § 92	
Utah Human Services Code		Utah Code Title 62A
Utah Referral Information Network		Utah Code § 62A-17-101 <i>et. seq.</i>

## **PART VI: JURISDICTION, COPYRIGHT, AND OTHER GENERAL PROVISIONS**

1. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this Contract will be governed and interpreted according to the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue will be in Salt Lake City, in the Third District Court for Salt Lake County.
2. **SEVERABILITY CLAUSE:** A final determination that any provision of this Contract is illegal or void will not affect the legality or enforceability of any other provision of this Contract.
3. **COPYRIGHT:** Except as otherwise expressly provided in this Contract, DHS owns the copyright for all materials developed by the Contractor for DHS. If the Contractor develops any materials for its own use in connection with this Contract, and if such materials are not required by this Contract or requested by DHS as part of the Contractor's performance, the Contractor may use those materials free of charge and without obtaining prior permission.

The Contractor shall release, indemnify, and hold the State, its officers, agents, and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted program, composition, secret process, patented or un-patented program, invention, article, or appliance furnished or used in the performance of this Contract.

4. **ABILITY TO COMPLY WITH CONTRACT REQUIREMENTS:** The Contractor represents that it has the financial, managerial, and institutional capacity to fully comply with the requirements of this Contract.
5. **AUTHORITY OF PERSON SIGNING FOR THE CONTRACTOR:** The Contractor represents that the person who has signed this Contract on behalf of the Contractor has full legal authority to bind the Contractor and to execute this Contract.
6. **CONTRACTOR HAS NOT ALTERED THIS CONTRACT:** By signing this Contract, the Contractor represents that neither it nor its employees or representatives have in any way altered the language or provisions in the Contract, and that this Contract contains exactly the same provisions that appeared in this document and its exhibits when DHS originally sent it to the Contractor.

Each party is signing this contract on the date stated below that party's signature. This contract is not fully executed until the State of Utah approving authorities have signed this contract.

**CONTRACTOR**

By: *Kauata Bloomfield*  
Kauata Bloomfield (Oct 27, 2021 17:18 MDT)  
Name: Kauata Bloomfield  
Title: Owner

**DHS**

By: *Tracy S. Gruber* 10/28/2021  
Tracy S. Gruber (Oct 28, 2021 05:28 MDT)  
Tracy Gruber Date  
Executive Director

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**STATE OF UTAH APPROVING AUTHORITIES**

**DHS BUREAU OF CONTRACT MANAGEMENT**

By: *Spencer Hall* 10/28/2021  
Spencer Hall, LPD099 Date  
Director

Log # 40745

Contract # A03421

DHS Procurement # Emergency

## **SCOPE OF WORK ATTACHMENT A**

### **PART I: DEFINITIONS**

In this contract, the following definitions apply:

“**Case Manager**” means the DHS employee or designee primarily responsible for a Client.

“**Client**” means an individual referred by DHS to the Contractor for services.

“**Client Identifying Information**” means information that identifies, or may lead to the identity of, a Client or the Client’s Family. Identifying information includes, but is not limited to, verbal or written communication, photographs, digital images, video clips, and data.

“**Family**” means the Client’s biological family, a kinship caregiver’s family, an adopted family, or another identified permanent caregiver’s family.

“**Parent**” means the Client’s biological Parent, legal guardian, a kinship caregiver, adopted Parent, or any other permanent caregiver identified by DHS.

“**PSA**” means Purchased Service Authorization, a form used by DHS to authorize the purchase of contractual services.

“**Team**” means a group of individuals authorized by the Case Manager that participates in planning, providing, and monitoring supports and services for the Client and Family or Parent.

“**Treatment Plan**” means a written, individualized plan that addresses the treatment needs and mental health assessment needs of the Client.

### **PART II: GENERAL REQUIREMENTS**

#### **A. POPULATION TO BE SERVED**

DHS Clients requiring a specialized level of residential treatment services due to neurodevelopmental disorders or and a lack of providers serving the age or gender of the client. Clients served may have been unsuccessful in, or refused placement in, other programs, or be in crisis and require immediate services.

#### **B. CONTRACTOR QUALIFICATIONS**

The Contractor shall have and maintain the following throughout the contract period:

1. Active registration with the Utah State Department of Commerce to conduct business in the State;

2. A current business license with the local municipality OR a statement from the municipality that a business license is not required;
3. A copy of the provider-generated annual certificate documenting that each Professional Parent's home meets all OL foster care license requirements, and a copy of the background screening clearances for all adults in the home. The Contractor shall notify the DHS Office of Quality and Design within one business day if the Contractor's license expires, is not renewed, has conditions or corrective actions placed on it, or is suspended or revoked.

**C. CONTRACTOR STAFFING REQUIREMENTS**

1. The Contractor shall comply with the staffing requirements of its license and, if accredited, accreditation staffing standards.
2. The Contractor shall designate and train at least one on-site staff to be the caregiver authorized to apply the reasonable and prudent Parent standard for decisions involving participation of the child in age or developmentally-appropriate activities, as required under section 471(a)(10)(B)(24) of the Social Security Act, and section 8.3A.8a and section 8.3A.8c of the Child Welfare Policy Manual. This individual may be part-time or full-time staff, and these requirements may be in addition to the individual's other staff responsibilities.

**D. USE OF CLIENT IDENTIFYING INFORMATION AND ELECTRONIC MEDIA**

1. Client identifying information is confidential. The Contractor shall ensure its staff, volunteers, and subcontractors comply with all confidentiality requirements described in this contract.
2. The Contractor shall safeguard and not release client identifying information to any person not providing services pursuant to this Contract with a need to know, or to any social networking mediums or other public forums except as allowed below.
  - a. If the Client's Parents retain Parental rights for the Client, the Contractor shall obtain written verification of Parental permission from the Case Manager prior to any images or information regarding the Client being used in social networking mediums or other public forums. The Case Manager may provide written permission if the Parent's whereabouts are unknown, if contact with the Parent cannot be made, or if Parents do not retain Parental rights.



- b. If the Client is eight years of age or older and has the mental capacity to understand, the Contractor shall obtain written permission from the Client prior to any images or Client Identifying Information being used in social networking mediums or other public forums.
- c. When the Contractor obtains Parent permission or the decision is made to allow the Contractor to use information or images in a public forum, the Contractor shall ensure that the information or images do NOT contain the Client's last name and do NOT identify the Client as a Client of the Contractor, as a DHS Client, or as a Client in foster or proctor care.
- d. The Contractor may only share general information regarding the Client. The Contractor shall not share information that is case specific or that informs other parties of DHS involvement or the Client's treatment issues or history.

**E. CLIENT USE OF ELECTRONICS AND SOCIAL MEDIA**

The Contractor shall obtain approval from the Case Manager before allowing a Client use of the internet, e-mail, and other social networking sites.

**F. AUTHORIZATION TO PROVIDE SERVICE**

The Contractor shall obtain written authorization from the Case Manager in accordance with the DHS PSA process before providing services. The PSA will include the services DHS is purchasing from the Contractor, the date services may commence, and an authorizing signature. Services will be paid based on the rates negotiated with the Contractor as stated in this contract.

**G. INCIDENT REPORTING**

The Contractor shall provide notice and documentation of incidents involving DHS Clients as required by the most current DHS Incident Reporting Guide located on the DHS website under Provider Portal and the requirements in Utah Administrative Code R501-1.

Additionally, the Contractor shall:

- 1. Maintain a list of phone numbers to report after-hour emergencies and crisis incidents, including the phone numbers provided by the Case Manager.
- 2. Immediately report the death of a Client to local law enforcement AND to the Division Director of the referring DHS division or, if the Division Director is not available, to the Assistant Director. The Contractor shall speak directly to the Division Director or Assistant Director. A voice mail or email message is NOT sufficient notification.

**H. EMERGENCY SAFETY INTERVENTIONS**

The Contractor shall have a written policy and procedures for emergency safety interventions and shall comply with safety intervention requirements to prevent injury to Clients, staff, other individuals, and property during a behavioral crisis in which a Client may be aggressive or assaultive.

**I. PROHIBITED THERAPY TECHNIQUES**

The Contractor shall not use, and shall prohibit others from using, the following therapy techniques:

1. Services in which the therapist or others use coercive techniques (e.g., coercive physical restraints including interference with bodily functions such as vision, breathing, and movement, or noxious stimulation) to evoke an emotional response in the Client such as rage, or to cause the Client to undergo a rebirth experience. Coercive techniques are sometimes referred to as holding therapy, rage therapy, rage reduction therapy, or rebirthing therapy.
2. Services wherein the therapist instructs and directs Parents, proctor Parents, or others in the use of coercive techniques that are to be used with the Client.

**J. ABUSE AND HARASSMENT PREVENTION**

The Contractor shall have and enforce a written policy mandating zero tolerance toward all forms of abuse and harassment, and outlining the Contractor's approach to preventing and responding to such conduct. The Contractor shall also:

1. Advise Clients of the Contractor's policy and of the processes available for reporting incidents or suspicions of abuse or harassment;
2. Have an established method for staff to privately report incidents or suspicions of abuse and harassment and ensure all staff are aware of the Contractor's methodology.

**K. CHILD PROTECTIVE SERVICES ("CPS") INVESTIGATIONS**

If child abuse or neglect as defined in Utah Code §78A-6-105(1) is suspected or confirmed, the Contractor shall follow mandatory reporting laws and shall:

1. Cooperate fully in any CPS investigation;
2. Keep knowledge of any investigation confidential;
3. Not accept further placements until any CPS investigation has been completed and a determination made regarding the allegations;

4. If an allegation is supported, notify the DHS Office of Licensing in writing within one business day of receiving notice of the finding; and
5. Comply with any Client safety provisions required.

### **PART III: SERVICES**

The Contractor shall provide 24-hour per day room, board, and supervision in a residential setting in conjunction with health care, mental health treatment, education, and other supports and services needed to improve DCFS male Client (04083803) functioning and ability to live safely in the community.

#### **A. PROGRAM**

The Contractor shall:

1. Provide services in a program environment that provide for the safety and well-being of the Clients being served; and
2. Have a clear intervention model that directs assessments, interventions, and Client treatments.

#### **B. PLACEMENT REQUIREMENTS**

##### **1. Client Information**

The Case Manager will provide the Contractor with copies of essential records and information from the Client's file upon placement when available or within five business days thereafter. If the Contractor has not received this information within five business days of placement, the Contractor shall contact the Case Manager and, if necessary, the Case Manager's supervisor.

##### **2. Contractor Initiated Removals from Placement**

- a. Contractor Choice: If the Contractor desires to remove a Client from placement, the Contractor shall provide the Case Manager with at least 10 days written notice to facilitate DHS finding another appropriate placement. Notice must contain the Client's name, the reason for requesting removal, including incident reports, if any, and the type and level of care the Contractor recommends the Client receive in a future placement.
- b. Emergency: If there is a need to remove a Client from placement with the Contractor due to an emergency, the Contractor shall immediately notify the Case Manager. If the Case Manager is not available, the Contractor shall contact the Case Manager's supervisor or division designee. Written notice must be provided

within one business day and must include the Client's name and the circumstances of the emergency. The Contractor shall comply with the Case Manager's instructions.

**C. CLIENT PERSONAL BELONGINGS**

1. The Contractor shall secure any Client belongings brought to the Contractor's facility at the time of placement and shall create and maintain an inventory that:
  - a. Includes a detailed list of the Client's belongings (details such as brand names or value, at Contractor's discretion);
  - b. Is signed by both the Client and the Contractor; and
  - c. Is updated and signed any time a change occurs;
2. Upon discharge of a Client from the Contractor's program, the Contractor shall:
  - a. Return all of the Client's belongings to the Client;
  - b. Review, sign, and obtain the Client's signature on an ending inventory; and
  - c. Replace any Client belongings for which there is no proper accounting.
3. If a Client is AWOL, the Contractor shall keep the Client's belongings secured until they are transferred to the Case Manager or another DHS authorized person.

**D. HEALTH CARE SERVICES**

The Contractor shall ensure each Client receives appropriate health care services throughout the duration of placement, and shall arrange for all needed medical, dental, and mental health services and follow-up visits in consultation with the Case Manager.

1. For Clients with Medicaid, the Contractor shall use providers covered by the health plan listed on the Client's Medicaid card for non-emergency medical, dental, and mental health checkups and follow up visits. The Contractor shall know and meet all current Medicaid requirements. If the Contractor neglects to take the Client to a provider covered by the health plan listed on the Client's Medicaid card, or does not meet all current Medicaid requirements for payment, the Contractor shall pay the bill and will not be reimbursed by the division.
2. If emergency care is required for a Client, the Contractor shall seek immediate medical attention. The Contractor is not responsible for the cost of emergency services not covered by the Contractor's insurance, the Client's Parents, the Client's private

insurance, Medicaid, or other insurance. The Contractor shall provide a copy of any medical billing for the Client pertaining to emergency care to the DHS division designee for review within 30 days after the billing date.

3. The Contractor shall provide the Case Manager with copies of any health visit reports within 30 days of the visit and maintain a copy in the Client's file.
4. In the event of a pending psychiatric inpatient admission while the youth is in the Contractor's care, the Contractor shall immediately notify the Local Mental Health Authority ("LMHA") and the Case Manager of the potential admission. The LMHA authorizes inpatient psychiatric treatment and is statutorily responsible to complete the civil commitment process.

If an emergency civil commitment (authorized by a peace officer, county designated mental health officer, or a physician) occurs prior to the LMHA being notified, the Contractor shall notify the LMHA and the Case Manager immediately thereafter.

If the admission occurs after regular business hours, the Contractor shall notify the Case Manager's supervisor.

- a. The Contractor shall document all notifications in the Client's file.
- b. The Contractor shall complete an Incident Report according to the requirements of this Contract.

## **E. TREATMENT REQUIREMENTS**

### **1. Assessment Requirements**

The Contractor shall:

- a. Use assessments in conjunction with the results of prior DHS assessments to identify and focus on the specific needs of the Client in developing Client Treatment Plans.
- b. Ensure Client assessments include trauma history and fetal drug/alcohol exposure, and incorporate appropriate modalities.
- c. Use a trauma-informed approach in treating Clients with a trauma history, allowing for the vulnerabilities or triggers of trauma survivors that traditional service delivery approaches may exacerbate or re-traumatize.

### **2. Team Meetings**

The Contractor shall actively participate as a member of the Team in the following:

- a. Ongoing Team Meetings: The Contractor shall participate in all ongoing Team meetings to coordinate the Client's treatment plan with any court-ordered service plan, the Client's permanency goal, and the desired long-term outcome.
- b. Change of Clinician Team Meeting: Except in emergencies, prior to changing a clinician or treatment provider the Contractor shall participate in a Team meeting to discuss the reasons, solutions, and transitions that are most beneficial to the overall treatment goals and service plan of the Client.
- c. Discharge Team Meeting: Prior to discharge, the Contractor shall participate in a Team meeting to discuss progress, transitions, and maintenance for the long-term stability of the Client.

### 3. **Treatment Planning**

The Contractor shall create a Treatment Plan.

### 4. **Treatment Delivery**

The Contractor shall:

- a. Include the Client's Family in the Client's treatment from inception to assure the Family fully understands, implements, and supports the Client's treatment objectives as the Client engages in Parent-time and transitions to a Family setting.
- b. Implement and use appropriate treatment modalities.
- c. Document the Client's treatment intensity and duration in the Client's file as identified in the Team meeting.
- d. Provide mental health services based on the Client's individual mental health needs as prescribed by a qualified mental health provider and with prior written approval of the Case Manager.
- e. Attempt to stabilize the placement by adjusting treatment services based on the Client's variable needs before making a request to change a Client's placement.
- f. Emphasize positive reinforcement in treatment.

## 5. **Family Visitation and Other Contact**

The Contractor shall facilitate Family contact and visitation with Parents and siblings. Contact with other individuals is only permitted with Team approval.

- a. Telephone Contact: The Contractor shall allow Clients a minimum of one 15-minute phone call to Family per week at no cost to the Client or Family, unless prohibited by the Case Manager or court order;
- b. Family Visits: The Contractor shall allow Client visits with Family at times that reasonably accommodate the Family's schedule. The frequency of visits will be determined by the Team and visits may not be withheld unless approved by the Case Manager.

The Contractor shall obtain written or electronic approval from both the Client's Case Manager and Parent for all off-site and home visits and shall document each with the following:

- (1) Date and time Client is scheduled to leave for the visit;
- (2) Name of the individual expected to transport the Client to the visit;
- (3) Expected date and time Client will return;
- (4) Actual date and time the Client left the Contractor's Program;
- (5) Name of the individual who transported the Client;
- (6) Name of the individual who will receive the Client; and
- (7) Actual time that Client returned to the Contractor's program at the conclusion of the visit.

## 6. **Transition Planning**

The Contractor shall:

- a. Coordinate with the Team to develop a written transition and aftercare plan for the Client within the first 30 days of program entry, and update it as appropriate.

- b. Work and coordinate with a Client's Family unless doing so will negatively impact the Client's treatment.
- c. Assist the Client in building support systems outside of the program, including Family and community members who may increase prosocial relationships and activities and provide support needed for successful aftercare.

7. **Educational Requirements**

The Contractor shall ensure the Client's educational, employment, and vocational training needs are met.

8. **Court Attendance and Youth Parole Authority ("YPA") Reviews**

The Contractor shall coordinate with the Case Manager to ensure each Client attends required hearings or reviews before the Juvenile Court or YPA when notified by the Case Manager. The Contractor shall:

- a. Provide written progress reports at least 72 hours prior to a hearing or review when requested by the Case Manager;
- b. Maintain a copy of all reports in the Client's file; and
- c. Ensure Contractor staff attend hearings or reviews upon request by the Case Manager.

9. **Discharge Reports**

The Contractor shall:

- a. Complete a discharge summary for each Client regardless of length of treatment;
- b. Include the date of discharge, progress on treatment goals, and recommendations for future service or treatment needs;
- c. Provide a copy of the report to the Case Manager within 15 days of termination of service; and
- d. Maintain a copy of the report in the Client's file.

10. **Fidelity**

The Contractor shall maintain a working internal quality assurance process for its program.

F. **TRANSPORTATION**



1. **Routine Transportation**

The Contractor shall provide routine transportation for Clients. Routine transportation is defined as any transportation of a Client 60 miles or less round trip. Routine transportation is considered part of care and supervision and will not be separately reimbursed.

2. **Contracted Transportation Payment (CTP)**

When transporting a Client more than 60 miles round trip, the Contractor may receive mileage reimbursement for mileage in excess of 60 miles. Reimbursement will be based on the CTP mileage rate stated in the Rate Table.

3. **High-Risk Transportation (CTH)**

In situations where the Case Manager and the Contractor agree that a Client requiring transport is not stable enough to be safely transported by only one staff member, the Contractor may be reimbursed for high-risk transportation based on the CTH mileage rate stated in the Rate Table.

In order to receive reimbursement for high-risk transportation, the Contractor shall:

- a. Obtain **written pre-authorization** from the Client's Case Manager **before** each occurrence;
- b. Transport only one Client at a time; and
- c. Ensure that a minimum of two transport personnel are present at all times during transport of the client.

G. **OUTCOMES**

1. The Contractor shall demonstrate that the Client's safety and health has been protected and preserved through placement.
2. The outcome must be measured in the monthly child & family team meeting.
3. The outcome must be tracked with a monthly written report to be delivered at the child and family monthly team meeting.












# 40745 Nines Foster Agency LLC (Emergency)

Final Audit Report

2021-10-28

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